

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

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COMMENTS OF ALLIED COMMUNICATIONS GROUP, INC.
ON EMERGENCY PETITION FOR WAIVER

Pursuant to Sections 1.3 and 24.819(a) (47 C.F.R. §§ 1.3 and 24.819(a)), response provisions applicable thereto, and the Commission's Order of March 29, 1995, DA 95-651, wherein it requested Comment on an Emergency Petition for Waiver filed at the Commission by Telephone Electronics Corporation (TEC), Allied Communications Group, Inc. hereby offers its Comments on the pending Request for Waiver.

I. The Interest Of Allied Communications

Allied Communications Group, Inc. (Allied) is a consortia of entities controlled by people of color. Established in early 1994, even prior to the Commission's first comprehensive Order dealing with the establishment of entrepreneurs' blocks or treatment of designated entities,¹ the Company's owners have experience in telecommunications licensing, including cellular, cable television, broadcast, and mobile satellite services. The Company has participated previously in rulemaking matters related to the development of policies and procedures for licensing PCS and, moreover, some shareholder representatives were involved in the preparatory (and advisory) activities for Mobile WARC (92). In sum, Allied is neither a latecomer to F.C.C. licensing nor to PCS.

II. The Threshold Principle Of Maximizing Competition

On August 10, 1993, the President signed the Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act), which amended Sections 3(n), 309(j) and 332 of the Communications Act of 1934. Sections 3(n) and 332 authorized the establishment of a

¹ See Fifth Report and Order in Docket No. 93-253, FCC 94-178 (released July 15, 1994), reprinted at 59 Fed. Reg. 37,566 (July 22, 1994).

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regulatory framework for PCS, while 309(j) authorized the grant of licenses through competitive bidding, or auctions.

In authorizing the grant of licenses through competitive bid procedures, Congress mandated that the F.C.C. consider certain threshold objectives in the licensing of PCS, including: (i) rapid deployment of new technologies, (ii) promotion of economic opportunity, (iii) competition and public access, (iv) wide dissemination of licenses, and (v) efficient use of the spectrum. Put differently, Congress wanted to ensure that competition in PCS would have an outcome different from what transpired in cellular, and, thus, required the Commission to, inter alia, ensure that specific categories of entities (small business, companies owned by minorities and women, and rural telcos) have opportunities to compete effectively during the auctions and ultimately provide PCS products and services.

The F.C.C. has sought to fashion licensing policies which facilitate the deployment of new services to the consuming public, and which maximize competition and diversity of license ownership. Its carefully crafted rules [those now under court challenge] are Constitutionally sound, consistent with the dictates of the Budget Reconciliation Act, and seek to address an inherent imbalance where smaller entities bid against giants for the same licenses. The rules also address the universally recognized problem that minority owned businesses have in gaining access to capital and the capital markets. Put differently, the Commission has sought to level the playing field and promote competition during the licensing of PCS, as well as the post-grant period.

While not fully satisfied with the rules, Allied believes them Constitutionally appropriate, and in furtherance of the dictates of the Budget Reconciliation Act.

III. The Dwindling Window Of Opportunity

It is axiomatic that first to market is first to the revenue stream. Allied has argued this point consistently over the past few months in connection with the licensing of broadband PCS.²

Of the more than 2,000 broadband licenses to be auctioned, only 99 have been bid under the just completed MTA auctions.³ These 99, however, in the aggregate, permit national coverage and, thus, guarantee that some licensees will have a significant head-start

² For example, this Company argued that BTAs should be auctioned prior to MTAs, or that some mix should be considered, rather than the staggered auction procedure the Commission ultimately adopted.

³ There are also the three pioneer licenses granted in Block A for the markets of New York, Los Angeles-San Diego and Washington - Baltimore.

on all others waiting in line. The longer the delay continues, the greater the problem and, eventually, will make it impossible (without some further adjustment) to attain the threshold objective of maximizing competition.

An expeditious resolution of the TEC dispute, where consistent with the Budget Resolution Act, should permit the F.C.C. to resume its licensing of broadband PCS and, thus, facilitate full deployment of products and services to the consuming public.

IV. The Proposed Waiver

The TEC request for waiver does not appear to simply rehash arguments previously before the Commission but, rather, seems to be more limited than its earlier requests for unlimited access to the upcoming auction. As such, it presents the Commission with a request for relief which has not previously been addressed or acted upon.

It argues that the Commission has discretionary authority to waive its rules on a showing of good cause, particularly where the circumstances make strict compliance with the rules inconsistent with the public interest.⁴ It argues further that based on the unique circumstances of its operations, it should be permitted to participate in the entrepreneurs' block (Blocks C and F). Its primary argument is that with all access lines aggregated, even those of its affiliates, it meets the Commission's test of a "rural telephone company. With that strict qualifying criteria in mind, TEC then proposes that it be granted a waiver to participate in markets where the total population is less than 300,000 persons, and delineates the eight BTA markets which are affected by its request. TEC also requests a bid discount of 10% for those affected markets.

In general, and based on the information available to Allied, it appears that TEC's narrowly tailored request is consistent with the Commission's rules and, accordingly, should be granted, provided that the Commission finds that such a grant is consistent with the Budget Reconciliation Act and the public interest. At the same time, Allied is of the opinion that TEC's aggregate (affiliated) power does not warrant a grant of its further request for a bid credit.

Allied would strongly urge the Commission to establish an additional procedure and "drop-dead" time in logical anticipation that others will seek to use the unique circumstances here to make similar arguments for waivers. Consistent with the Commission's rules, that time should be no longer than the minimum time required under Commission procedure, and should be set out simultaneous with its decision in the pending Request for Waiver.

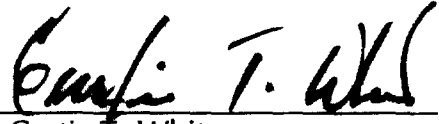
⁴ See *Emergency Petition For Waiver* at 3.

Conclusion

For all of the foregoing reasons, Allied urges the Commission to grant that portion of the pending Request for Waiver which permits TEC to bid in the entrepreneurs' blocks, but that it reject that portion relative to a grant of authority for a 10% bid credit.

Respectfully submitted,

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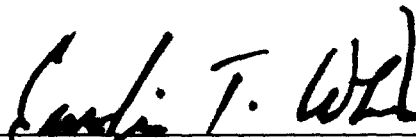
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments" were forwarded this 3rd day of April, 1995, via first class U.S. Mail, postage prepaid, to the persons listed on the attached service list.

A handwritten signature in black ink, appearing to read "Curtis T. White", is written over a horizontal line.

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